

THE EFFECTIVENESS OF LAW NO 35 OF 2014 CONCERNING CHILD PROTECTION IN PROTECTING CHILDREN'S RIGHTS IN THE EDUCATIONAL ENVIRONMENT USING ANALYSIS OF SIYASAH DUSTURIYAH (CASE STUDY OF KARO DISTRICT)



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Abstract

The current era of modernization makes children the nation's successors who are required to become the next generation that can make Indonesia progress. One proof is that children are prepared to grow up to become the nation's successors by providing protection from the government in protecting children's rights and obligations as regulated in Law Number 35 of 2014. Ironically, the facts that occur in the field are not as expected by the community, as in many cases. Bullying that occurred in Karo Regency where the victim and perpetrator were still at school and even occurred in an environment where they were studying. This research uses a normative juridical approach and took place in Karo Regency using existing data from the Kabanjahe District Court and also from the Kabanjahe Religious Court. The results of this research explain that crimes against children where both the victim and perpetrator are minors in Karo Regency have occurred very frequently. In the school environment, there are also criminal acts of bullying, extortion, and assault. In this case, it could be said that the teacher can only advise students and not dare to give physical punishment to the perpetrator, which is why the implementation of Law No. 35 of 2014 is not effective. Because when the teacher gives a punishment the teacher will be afraid that the punishment violates the rules that have been set. This factor causes school children in educational environments to no longer have morals because they feel they are protected by law.

Keywords: Child Protection, Child Protection Law, *Sisayah Dusturiyah*, Karo Regency

INTRODUCTION

The phenomenon of violence against children is increasingly common with different forms of violence, namely exploitation, verbal, and physical abuse (Kemenpppa, 2023). In fact, child neglect means that cases like this are often found and quite a few people allow this to happen before it goes viral on social media pages. As has been explained, children have the right to live like adults, because children are the next generation of the nation who are prepared to continue their lives, protect the potential of human resources, and develop the whole human being, toward a just and prosperous society, materially spiritually based on Pancasila and the 1945 Constitution (Nashriana, 2012).

Child protection is all efforts created to be devoted entirely to children to create conditions for each child to be able to carry out their duties, obligations and prohibitions. As children grow naturally, both physically and emotionally (Nashriana, 2012). Article 28C paragraph (1) which reads: “Everyone has the right to develop themselves by fulfilling their basic needs, has the right to receive education and benefit from science and technology, arts and culture, in order to improve the quality of life and for the welfare of humanity.” This law interprets children’s rights to receive adequate education, including protection from the government. In the school environment, children’s rights and obligations are accommodated by teachers and parents.

A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb as stated in Law No. 35 of 2014 (Article 1). The law states that if someone commits a criminal act against a person under the age of 18 then that person is related to Law Number 35 of 2014 concerning child protection. There are widespread violations of the Child Protection Law, especially in school environments (UU No. 35 of 2012). The government created a solution by establishing a special institution for child protection which aims to protect children.

The reality that occurs in Indonesia is that this country’s attitude towards children is still worrying so protection for children is not yet perfectly evenly distributed in Indonesia. The proof is that up to now, violence against children and violations of human rights are still frequent and even increasingly widespread at this time. There are many violations of child protection of different types, including children in conflict with the law, children

becoming victims or suspects of sexual abuse, drug abuse, even sexual exploitation, and so on (Kemenpppa, 2023).

One of the cases of the marriage dispensation trial decision issued by the Kabanjahe Religious Court was that a minor who was still in school had to decide to drop out of school and leave school because he was pregnant and would soon get married to take responsibility for his actions. The school has a rule that students are not married so the child leaves school (Kabanjahe Religious Court decision 19 April 2022). The existence of a law on child protection makes judges consider dispensations for marriage.

The unborn child has the right to live a decent life. The Supreme Court (MK) interpreted Article 43 paragraph (1) of the Marriage Law that “the law must provide fair legal protection and certainty regarding the status of a child who is born and the rights they have, including children who are born despite the validity of their marriage still disputed” (Constitutional Court Decision Number 46/PUU-VIII/2010).

The law on child protection was created in part to protect children. In fact, the Millennial era which focuses on social media has had many positive and negative impacts. One of the negative things is disseminating videos of physical violence that were recorded by oneself to prove one's greatness, and increase one's reputation and image. The triggers for violence against children are lack of family function and economic background. Children can be victims and also perpetrators of seizing or depriving other children of their rights both in the family, community, and educational environment. So, the effectiveness of improving the quality and qualities of children comes from empowering the family as a vehicle for socializing and learning all kinds of good treatment (Sholeh).

The Indonesian Child Protection Commission (KPAI) is an independent institution formed based on Law No. 23 of 2002, then Megawati Soekarno Poetri, as President at that time, issued Presidential Decree No. 77 of 2003, while KPAI was formed in 2004. This institution is the only one mandated by law to increase the effectiveness of child protection (Supeno, 2012).

Schools are supposed to be a place to study, form a family and also get protection from older people but are actually treated differently. Karo Regency is one of the areas in North Sumatra Province which is 60-70 km from Medan City. The case of child violence

that occurred in Karo Regency was raised to see how effective the law that had been enacted was (Nashriana, 2012).

To create a dignified life for children in Karo Regency, inter-school socialization starting from elementary school, carried out by various government institutions and community institutions, can make children understand legal certainty for themselves. The socialization provided has an effect on the child whether he is being threatened or is in trouble with the law. On the other hand, parents cannot control their children and also monitor their children, one of the reasons is that parents work in the fields and only have time to rest together at home, but some parents are willing to spend and dedicate all their time and energy so that their children get love and learning provisions from home and their parents.

Schools are part of the educational environment so in June 2023, at SMAN (State High School) 2 Kabanjahe, a female student with the initial “Y” was verbally bullied by her classmates, using inappropriate language that included ethnic groups. The female student with the initial “Y” felt teased by calling “Hey Nias” even though the student had a name, but they named the female student after her ethnic group. However, the school denied the student’s accusations, resulting in the student not continuing her studies at SMAN 2 Kabanjahe.

Protection exists because direct and indirect threats intend physical or emotional harm. According to Wioyono, protection is a form of service provided by law enforcement or security forces to provide a person with a sense of security in order to avoid threats (Wiyono, 2006). Indonesia is a country that highly upholds freedom of expression for every citizen with the guarantee of legal recognition and protection. Protection of children in the school environment is carried out by Law No. 31 of 1999 concerning Human Rights. The existence of this law can make people understand what their rights, obligations, and prohibitions are (Nazmi, 1992).

REVIEW OF LITERATURE

Child Protection Laws

Law Number 35 of 2014 concerning child protection which has been stipulated is still not effectively implemented in the Karo district. The large number of crimes and

crimes that are the main factor caused by minors, even in the field of education, is not something strange. In Article 1 of this Law, what is meant by: (1) A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. (2) Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination.

Then, still, in the same article, Article 1 in this Law is what is meant by: (12) Children's rights are part of human rights which must be guaranteed, protected, and fulfilled by parents, families, communities, the state, government, and regional governments. (13) Communities are individuals, families, groups, and social organizations and/or community organizations. (15) Special Protection is a form of protection received by Children in certain situations and conditions to guarantee a sense of security against threats that endanger themselves and their lives in their growth and development. (15a) Violence is any act against a child that results in physical, psychological, sexual, and/or neglect, misery, or suffering, including threats to commit unlawful acts, coercion, or deprivation of liberty.

Article 9 In this Law what is meant by: (1) Every child has the right to receive education and teaching in the context of his personal development and level of intelligence in accordance with his interests and talents. (1a) Every child has the right to receive protection in an educational unit from sexual crimes and violence committed by educators, educational staff, fellow students, and/or other parties.

Children's rights in the educational environment are as follows: These rights and obligations must be fulfilled so that children can grow, develop, and participate optimally in society. There are four principles contained in the Convention on the Rights of the Child, namely: 1. Non-discrimination. 2. Best interests of the child 3. Survival and development of the child 4. Respect for the child's opinion (Basic principles of CRC in Law No.23/2002) Children who are not cared for by their biological parents, such as being cared for by the child's guardian, or foster parents, the obligations of the caregiver remain the same as those of the parents. However, the general and fundamental responsibility of parents is to guarantee the right to education for their children

Evidence in the field that children are vulnerable to becoming victims and even perpetrators of rampant violence against children. In this case, the effectiveness of the

Children's Law in providing legal protection for children who are victims of verbal and physical violence in the educational environment has so far been implemented. However, the provisions for legal protection for children who are victims of violence cannot yet be implemented effectively in society, because the regulatory concept regarding the child protection law itself is not in line with what society wants. So, in terms of application and implementation, it must be addressed from top to bottom so that mistakes no matter how big or small still receive appropriate punishment.

Sisayah Dusturiyah

The section of *siasah fiqh* called *siasah dusturiyah* discusses matters of state legislation. The concepts of the constitution (state constitution and history of legislation), legislation (method of formulating laws), democratic institutions, and *shura* are some of the important concepts in this legislation. In addition, this research discusses the concept of the rule of law in politics, government-citizen relations, and the rights of citizens that must be protected (Iqbal, 2014).

In *Siyasah Dusturiyah fiqh*, the problem is the relationship between the leader and his people, as well as the institutions and institutions that exist in his society. As a result, *fiqh siyasah dusturiyah* usually only discusses state regulations and legislation that are in accordance with religious principles, achieve human benefit, and fulfill human needs (Djazuli, 2004).

RESEARCH METHOD

The type of research used in this research is normative juridical. This research examines the effectiveness of Law Number 35 of 2014 concerning child protection. In the normative concept, we look at legal norms, legal norms originating from applicable regulations made by officials. So, it is also called the doctrinal method.

This research also uses a literature study method which uses two primary and secondary sources. The premier source comes from the 1945 Constitution of the Republic of Indonesia, and secondary sources come from journals, books, news, the internet, theses, and theses. This research activity is to collect data and also combine opinions and theories that have been read in documentation through secondary data such as the internet, experts, books, and those that are closely related to the problem being researched by the researcher.

RESULTS AND DISCUSSION

Forms of Legal Protection of Children's Rights

Rights are something obtained by humans, even other humans cannot interfere with the rights obtained, rights have a normative element which in their application has the right to equality and the right to freedom between individuals and groups who interact with each other (Sophian & Sahid, 2011). Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, government, and local governments. Law no. 35 of 2014 article 1 paragraph (12), states that children's rights are protected and guaranteed by state organs and levels of society. Then paragraph (15) explains that if a child experiences criminal elements, threats that endanger himself and his life, or other things that harm him, then the child can receive special protection from state organs and also levels of society.

Child protection is regulated in Law no. 35 of 2014 article (1) paragraph 2, namely, Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination. This law includes children with disabilities, neglected children, and foster children who also have the right to receive the same legal protection (UU No. 35 of 2014).

Based on the Convention on the Rights of the Child, children's rights can generally be grouped into categories of children's rights, including (Joni & Tanamas, 1999): a) The right to survival and the right to obtain the highest standard of health and the best possible care. This right is, among other things, contained in articles such as (i) the child's right to have a name, citizenship, and life rights given to him by his parents at birth. (ii) the state's obligation to protect children in all forms of treatment and children with disabilities are given special treatment. (iii) the state's obligation to guarantee children's education and protect children from all criminal acts that threaten and harm children; b) The right to protection (Protection Rights), namely the rights in the Convention on Children's Rights which include the right to protection from discrimination, acts of violence, and neglect for children who do not have families for refugee children and also protection against treatment.

Legal protection for the fundamental rights of children (Fundamental Rights of Children) who are victims of physical or verbal violence and who are in the process of being examined or before the examination takes place have the right to receive legal protection from the PPA (Women's and Children's Services). Reports from the public or the viral case on social media in January 2021, the PPA unit succeeded in arresting three perpetrators who threatened to kill and burn down the victim's house, including minors. The threat occurred because the perpetrator told the victim to video his own older brother while he was taking a shower. This case was revealed because viral videos of bullying and threats were widely distributed.

Similar cases of violence never stop even in the educational environment at school, in January 2023 now physical abuse has also occurred among junior high school students in Simpang Empat District. The incident took place in a plantation field and was videotaped by the perpetrator and then spread widely until it went viral. The abuse occurred due to a misunderstanding between the victim and the perpetrator, with the victim's social media account being hijacked to curse at one of the perpetrators. With this case, the Tanah Karo Police Satreskim facilitated the victims and perpetrators to mediate. After that, the students were given instructions not to repeat something similar.

The violence in these two cases has gone viral and was handled by the PPA (women's and children's services) unit, in this case assisting the victim regarding the psychology and mental health of children who are vulnerable to traumatized. This legal protection brings victims their right to be protected from external threats that lurk them. A criminal act that befalls a victim is a violation of their human rights. A violation of human rights is an act that seriously violates a person's dignity and self-respect (Soeroso, 2012).

Implementation of the Child Protection Law in the Educational Environment

Child protection is related to the impact on children's lives, which is juridical in nature to bind someone to obey the regulations that have been set. Education has the function of providing direction to become a person who has faith, noble character, knowledge, and competence, and becomes a responsible and intelligent citizen. Intensive education carried out in schools has a role not only in teaching each other how to count, read, and write. Currently, teachers only focus on teaching but not on the punishments given for breaking the rules, even though the aim of sending children to school is to direct

them to good deeds and lead them to become successful people. The existence of legal protection for children that has been established by law makes teachers hesitant to give punishment directly (Assegaf, 2017).

Child violence is rampant in educational environments, including schools. This research discusses the effectiveness of the Child Protection Law Number 35 of 2014 in Karo Regency. In 2021 and 2022 the Kabanjahe District Court will decide cases against children in different cases. These include deciding cases of abuse, theft, pornography, destruction and destruction of goods, extortion and threats, narcotics abuse, and also cases clarifying child protection. The effectiveness of this law is after the decision of the case and the giving of punishment to children who are in conflict with the law, that is when we see whether the punishment that has been determined deters the child or on the contrary becomes brutal.

In reality, child protection in the educational environment in the Karo Regency area is less effective because the victim and the perpetrator do not continue the case before the district court. Cases that occur in the school environment, such as verbal and physical bullying, are only mediated by the school, police, investigators, and even the PPA (women's and children's services) unit. Even cases of verbal bullying that occur at school, which are considered normal, can make the victim depressed and even damage the victim's mental state. For example, cases of bullying by calling someone's name inappropriately (labeling) towards their classmates were not investigated thoroughly, and children who feel like they are victims prefer to solve the problem by not going to school so they get an expulsion letter stating that the alleged victim is out of school. With cases like this, the school admitted that there was no bullying through teasing even though the teacher had asked what actually happened to the alleged perpetrators, and the alleged perpetrators, who were still in high school (SMA), felt that there was no teasing, that's why the school does not admit that bullying occurs.

Educational institutions are required to create intelligent and superior successors to the nation. Teachers as agents of change are required to face technological developments accompanied by knowledge but not be separated from the norms that already exist in Indonesia. According to several academics, education in Indonesia is declining slowly because it is moving away and starting to abandon the moral order that applies in Indonesia.

Even though education is the only key to the progress of Indonesia, education is also starting to decline due to the ineffectiveness of the laws implemented in Indonesia, as if realizing that after committing a crime the law becomes a weapon to protect against punishment, rather than being the subject of that punishment himself (Rasmuin, 2015).

Child protection laws also need to be socialized in educational environments such as schools and Islamic boarding schools. In this era of modernization, we not only promote the importance of normative law but also religious values which are instilled from elementary school to university. If a person has instilled religious values within himself, he can know what is good and what is bad and also view humans as a way of life, a way of life that means obeying religious norms in his life. Apart from that, Ibnu Khaldun also placed religious knowledge in the ranks of knowledge accepted by the mind. Meanwhile, Hamkan views education as not only periodic material but education that can bring one's nature to the potential of the mind, feelings, and human characteristics in a harmonious and balanced manner (Nizar, 2008).

Siyasah Dusturiyah's Review of the Child Protection Law

State institutions that act as decision-makers and policymakers in the government, namely, the legislature, executive, and judiciary must be guided by the 1945 Constitution of the Republic of Indonesia, which is the highest hierarchy in the legal regulations of the Republic of Indonesia. The legislative policies that have been made are all the rules that must be obeyed by all groups for the benefit of the people.

The scope of the discussion of *siyasah dusturiyah* includes discussing the issue of legislation (legislation), the concept of the constitution, namely the Constitution, and the history of the emergence of legislation in a country and also state institutions that play a role in the country's democracy. Therefore, *siyasah dusturiyah* is limited to discussing regulations and legislation with principles based on religion, and believing in the one and only God, which is a realization for the benefit of the people to achieve common goals (Djazuli, 2023).

Law number 35 of 2014 concerning child protection in the view of fiqh *siyasah dusturiyah* regulates the provisions of Islamic law so that they can apply effectively in public relations. The study of *siyasah dusturiyah* is a thought that originates from humans and their environments, such as doctrinal thoughts from politics, social habits, customs

regulations, and policies that existed previously. *Siyasah duturiyah* also creates relationships between communities in realizing benefits and prosperity. There is a study of *siyasah duturiyah* fiqh which includes statutory policies regulated by the government in decision-making, policy-making, and supervision (Ramadhan, 2013).

The explanation above can be drawn regarding the conclusion from the discussion of fiqh *siyasah dusturiyah*, which is the science of Islamic statecraft that in short discusses the regulation of human interests. *Siyasah dusturiyah* is in line with Indonesian positive law because of the establishment of laws, regulations made by power holders, and policies made in line with the Islamic religion by not eliminating the rights of other religions in order to realize the benefit of the nation and the people and avoid harm to the country and the people.

CONCLUSION

The government makes every effort to protect the rights and obligations of children. The existence of Law Number 35 of 2014 is one of the legal ways to protect children from threats and acts against the law. However, the effectiveness of this law has not been felt equally by all children, especially in Karo Regency. Among the problems of the ineffectiveness of the Law are several factors, including (i) law enforcement factors, (ii) infrastructure and other supporting factors, (iii) local cultural factors, and (iv) community factors.

In order for the law that has been made to be effective, the local government also carries out socialization from school to school so that students understand the many rules that have been set by the government to protect children's rights and obligations. However, this does not mean that children do not have responsibilities if there is a law on child protection. Law number 35 of 2014 was created with the aim of ensuring the fulfillment of children's rights so that they can live, grow, develop, and participate in the country. With the existence of this law, the state should be able to realize the benefit of its people so that they avoid criminal acts that could harm anyone.

Crimes against children where the victim and perpetrator are minors in Karo Regency are very common. In the school environment, there are also criminal acts of bullying, extortion, and assault. In this case, it could be said that the teacher can only advise

students and not dare to give physical punishment to the perpetrator, which is why the implementation of Law No. 35 of 2014 is not effective. Because when the teacher gives a punishment the teacher will be afraid that the punishment violates the rules that have been set. This factor causes school children in educational environments to no longer have morals because they feel they are protected by law.

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